offered. Clearly such performance is not a good consideration, as one cannot very well accept an offer before it is made. In the further case of *Stamper* v. *Temple*, 6 Humph. (Tenn.) 113, also relied upon, the court's opinion on this precise point is probably *obiter*. An English case also usually cited in this connection, in deciding that the reward need not be the motive for the performance does not necessarily decide that knowledge on the part of the claimant is absolutely unessential. *Williams* v. *Carwardine*, 4 B. & Ad. 621.

If the view be adopted that knowledge is not a prerequisite, an exception must be made to the rule of contracts requiring mutual assent, an exception which it would seem is hardly justifiable. There is great force, however, in the argument that allowing a recovery in such cases is good policy, in that the public will be influenced to be more zealous in their efforts to arrest and convict criminals, restore lost property, etc., without in the least bringing any hardship on the offeror. But if public policy does demand that a recovery in such a case be allowed, it should be not on a contractual but on a *quasi*-contractual basis. Strictly then the principal case would seem to be logically sound, and in no way to depart from the theory of assumpsit. If we regard a contract as a bargain where both parties must intend that one thing be given in exchange for the other, knowledge seems essential. Furthermore an historical analysis of the action of assumpsit also strengthens the *ratio decidendi*, for when it is remembered that assumpsit is but a development from the action of deceit, where the plaintiff's cause of action rested largely on the fact that he had placed reliance on the defendant's offer or representation, knowledge on the part of the plaintiff seems all the more necessary.

THE RESPONSIBILITY OF THE EMPLOYER OF AN INDEPENDENT CONTRACTOR IN REGARD TO WORK ON A HIGHWAY. — The general rule that there is no liability for the negligence of an independent contractor is well settled. The mere employment of an independent contractor, however, does not always relieve the employer of responsibility. For example, if a municipality employs an independent contractor to make excavations in a highway, it is generally held that the municipality is liable for injury resulting to one using the highway from the negligence of the contractor in not surrounding the excavations with proper protections or in leaving the work improperly done. *Penny* v. *Wimbledon, etc., Council*, [1899] 2 Q. B. 72; *Circleville* v. *Neuding*, 41 Oh. St. 465. See *contra*, *O'Hale* v. *Sacramento*, 48 Cal. 212; *City of Erie* v. *Caulkins*, 85 Pa. St. 247. The ground of liability is that there is a positive duty imposed by law upon the municipality to see that the streets are in a reasonably safe condition, and it cannot be relieved of this duty by employing an independent contractor to carry it out. 2 DILL., MUN. COR., 4th ed., §§ 1027–1031. In other words, it is not really the independent contractor's negligence for which the municipality is held, but its own failure to fulfil a positive duty.

A somewhat similar question arises where an individual or corporation is permitted by public license to make excavations in the highway. This question was presented in a recent case in New York. The defendant railway was given authority by statute to cross a highway. Apparently the only conditions were that certain specifications should be followed,

and that the highway should be restored so as not to impair its usefulness. The whole construction of the road was delegated to an independent contractor, who negligently failed to put lights on an embankment thrown up on the highway, in consequence of which the plaintiff driving along the highway ran into it and was injured. The court expressly disapproved of a prior New York decision on this point and held that the defendant was liable. *Deming* v. *Terminal Ry. of Buffalo*, 169 N. Y. 1.

It has been thought that the employer is not liable on such a state of facts. *Smith* v. *Simmons*, 103 Pa. St. 32. Other courts have reached the result of the principal case on the grounds taken in the municipality cases. *Gray* v. *Pullen*, 5 B. & S. 970. This reasoning is tenable wherever the statute granting the license has in fact imposed affirmative precautionary duties. Unless such positive duties are imposed the analogy perhaps fails. There is, however, another ground upon which the liability may rest. It is well recognized that if what the employer contracts for is a public nuisance he is not relieved by the fact that it is created by the independent contractor. *Ellis* v. *Sheffield, etc., Co.*, 2 E. & B. 767. An excavation or obstruction in the highway is *per se* a nuisance. So far as it is authorized by law it is of course not actionable. It remains a nuisance, however, and, in so far as it is not surrounded by the precautions which are required by the statute or which ought reasonably to be taken, any injury resulting therefrom is actionable. *Woodman* v. *Metropolitan R. R. Co.*, 149 Mass. 335; *Colgrove* v. *Smith*, 102 Cal. 220. In this way the desirable result of the principal case is reached, whether or not there be express statutory requirements.

Severance of Chattels from the Realty by a Disseisor. — To the layman it seems obvious that if a disseisor cuts down and carries away trees from the disseisee's land, the latter should at once be able to recover the logs or their value directly. According to the authorities, however, such is not the law, and under such circumstances before a recovery of the land neither trover, replevin, nor assumpsit will lie for the severed realty. *Lehigh, etc., Co.* v. *New Jersey, etc., Co.*, 55 N. J. Law 350; *Anderson* v. *Hapler*, 34 Ill. 436; *Bigelow* v. *Jones*, 10 Pick. (Mass.) 161. A recent case suggests the question anew holding that the disseisee cannot recover either the logs or their value. *Clarke* v. *Clyde*, 66 Pac. Rep. 46 (Wash.). No class of cases better illlustrates the important part which the ancient doctrine of seisin still plays in the modern law. The reasons usually stated for the rule are, it is true, the undesirability of trying title to land in a transitory action, and the inexpediency of allowing the actual occupant to be harassed by frequent suits when a single real action would settle the dispute. See *Mather* v. *Trinity Church*, 3 S. & R. (Pa.) 509; *cf. Wright* v. *Guier*, 9 Watts (Pa.) 172. But it seems that the real explanation must be found in the doctrine of disseisin. 3 Bl. Com. 210; *Bigelow* v. *Jones*, *supra*. Actions which determine title to personal property are essentially possessory. But the right to possession of the severed realty, as chattels, is in the disseisor, for he has all the rights incident to ownership of an estate in fee simple. See 3 Harv. L. Rev. 23, 28. It is noticeable, however, that the courts overlooking a similar difficulty, allow trover for timber severed and carried away by a trespasser who does not claim title to the land. *Forsyth* v. *Wells*, 41 Pa. St. 291.